IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9439 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JABUNBEN JAHANGIRBHAI KURESHI

Versus

THE COLLECTOR, AMRELI

Appearance:

1. Special Civil Application No. 9439 of 1996

MR RM CHHAYA for Petitioner No. 1

MR SK PATEL for Petitioner No. 1

MR SIRAJ GORI, AGP for Respondent Nos. 1,3

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 31/07/2003

ORAL JUDGEMENT

1. This petition has been filed challenging the

order dated 19-07-1990 (Annexure-E) passed by the Special Secretary (Appeal), Revenue Department and consequential modification order dated 08-02-1991 (Annexure-F) passed by the same authority.

2. The petitioner applied for allotment of land admeasuring 1 Acre 24 Gunthas out of government land bearing Survey No.99 for the purpose of installing and running a poultry farm. After the said application was processed by the authorities and respondent No.2 Panchayat having sanctioned the development plan of the petitioner in pursuance of resolution passed by the Gram Panchayat to the effect that there was no objection if the land was granted to the petitioner, on 18-06-1985 the District Collector, Amreli i.e. respondent No.1 granted the land to the petitioner. On 25-04-1985, the petitioner was put in possession and as a consequence on 08-10-1985 vide Entry No.557 the name of the petitioner was mutated in the Revenue Record. On 14-10-1985 respondent No.2 - Sarpanch, Giriya Gram Panchayat filed a Revision Application under Section 211 of the Bombay Land Revenue Code before the Secretary, Revenue (Appeals) and obtained stay against the aforesaid order dated 18-06-1985 (Annexure-B) passed by the Collector. On 18-07-1985 Entry No.557 was deleted vide Entry No.698 on the basis of the stay granted by the Secretary, Revenue (Appeals). The revisional authority held that though the grant of land was proper, as the said land was falling within area of submergence of Thebi Irrigation Project, the same could not be developed for the purpose for which it was granted and hence, the petitioner was directed / permitted to select some other land elsewhere.

3. The petitioner accordingly approached this Court and on 08-11-1996 the petition was admitted and ad-interim relief granted on 08-11-1996 was directed on 10-12-1996 to continue till further orders. In pursuance of the aforesaid orders made by this Court, on 16-01-1997 the Mamlatdar, Amreli directed Talati, Giriya to pass appropriate entry and Entry No.772 came to be made mutating the land once again in favour of the petitioner. The said entry came to be certified on 29-06-1997. It is stated by Mr.R.M.Chhaya, learned advocate for the petitioner, that the petitioner has been in possession of the land all through out and is in possession even as on today.

4. Mr.Chhaya submitted that on 01-05-2002 the Superintending Engineer, Amreli Division, Amreli addressed a letter to the petitioner stating that in light of the fact that because of certain technical

reasons the land in question is not likely to be submerged, it was not necessary to acquire the land and pay compensation for the same. However, it is an admitted position that the aforesaid letter is not on record of this petition.

5. It was submitted by Mr.Chhaya that in light of the fact that the impugned order of the revisional authority is a consolidated order in relation to the petitioner as well one Jalaram Chemical Industries, the petitioner would urge that same order as made in case of Jalaram Chemical Works by this Court be made in the case of the petitioner. A copy of unreported judgement dated 15-01-1993 rendered in Special Civil Application No.695 of 1993 has been placed on record.

6. Heard Mr.Siraj Gori, learned A.G.P. appearing on behalf of respondent Nos.1 and 3. Though served, there is no appearance on behalf of respondent No.2.

7. On a perusal of the impugned order dated 19-07-1990 it is apparent that the Revision Application was preferred by Sarpanch of respondent No.2 Gram Panchayat both against Jalaram Chemical Industries and the petitioner in relation to the land granted to each one of them out of Survey No.99. The revisional authority has passed a common consolidated order in case of the petitioner as well as the said Jalaram Chemical Industries. In these circumstances, it is not necessary to deal with various contentions raised in the petition in detail.

8. In the aforesaid decision rendered in Special Civil Application No.695 of 1993, the Court has observed as under :

> " The various objections raised by the Sarpanch of the Giriya Gram Panchayat did not find favour with the State Government. However, the grant was set aside on the grounds that the proper price fixation of the land was not made; that the land in question was required by the State Government for Thebi Irrigation Project and that the whole of the land of Survey No.99 would be under submergence. Mr.Buch states that the acquisition of the said land Survey No.99 made by the State Government by issuing Notification under Section 4 of the Land Acquisition Act, 1894 has since been set aside and an order of de-acquisition of the said land has also been made. However, Mr.Buch is not in possession of

any order of de-acquisition. He relies upon the communication received by one Jemunaben in respect of the grant of land to her out of the said land Survey No.99.

In above view of the matter, the impugned order dated 19th July, 1990 made by the State Government in Revision Application No.735/1985 and the communication dated 8th February, 1991 with respect to the grant of land to the present petitioner under order dated 25th April, 1985 is quashed and set aside. The Revision Application No.735/1985 is remanded to the State Government to be decided afresh keeping in view the de-acquisition of the said land, if any. Pending the Revision Application before the State Government, the petitioner shall maintain status quo as to the possession and the user of the land in question. "

9. For the aforestated reasons, it is necessary to set aside the order dated 19-07-1990 alongwith the order dated 08-02-1991 in relation to the petitioner also and the Revision Application is remanded to the State Government to be decided afresh bearing in mind subsequent developments regarding de-acquisition of the land in question. The petitioner is directed to maintain status quo as to the possession and the user of the land in question during pendency of the Revision Application before the State Government.

10. The petition is accordingly allowed. Rule made absolute. No order as to costs. Direct service permitted.

Sd/-

[D.A.MEHTA, J]

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'Bhavesh'